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Trustee of the Bankruptcy Estate of
RealtyShares, Inc.

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

In re
REALTYSHARES, INC.,
Debtor.

Case No. 20-30621

Chapter 7

E. LYNN SCHOENMANN, Trustee of the
Bankruptcy Estate of Realty Shares, Inc.

Adversary Proceeding No.:

Plaintiff,

vs.
RS LENDING, INC.; REALTYSHARES
SECURITIES, LLC; and
IIRR MANAGEMENT SERVICES, LLC,

Defendants

COMPLAINT

(Account Stated; Common Count;
Money Had and Received; Successor
Liability)

Parties

1. Plaintiff E. Lynn Schoenmann is the Trustee of the bankruptcy estate of RealtyShares, Inc. (“RealtyShares” or the “Debtor”).

2. RealtyShares is a Delaware corporation with its former principal place of business in San Francisco, California. RealtyShares owned and operated an online investment platform for real estate crowd funding services, www.realtyshares.com (the “RealtyShares Platform”). The

1 RealtyShares Platform enabled investors to purchase shares in private real estate investments,
2 provided investors access to a range of real estate investment options and allowed users to browse,
3 view, finalize, and manage real estate investments online. In or around November 2018,
4 RealtyShares ceased adding new investors and offerings to the RealtyShares Platform due to its
5 inability to secure additional capital.

6 3. Defendant RS Lending, Inc. (“RS Lending”) is or was a Delaware corporation with its
7 principal place of business in San Francisco, California. RS Lending is or was a wholly owned
8 subsidiary of RealtyShares. RS Lending served as the issuer of debt securities, offering and selling
9 to investors promissory notes made by RS Lending that were dependent for payment on payments
10 that RS Lending received on specific corresponding borrower loans relating to real estate. These
11 securities were offered through the RealtyShares Platform owned and operated by RS Lending’s
12 parent company, RealtyShares.

13 4. Defendant RealtyShares Securities, LLC (“RealtyShares Securities”) is or was a
14 Delaware LLC with its principal place of business in San Francisco, California. It operated as the
15 real estate investment arm of RealtyShares.

16 5. Defendant IIRR Management Services, LLC (“IIRR”) is a Delaware corporation with
17 its principal place of business in San Francisco, California.

18 ***Jurisdiction, Venue and Intradistrict Assignment***

19 6. RealtyShores filed a petition under Chapter 7 of Title 11 of the United States Code
20 (the “Bankruptcy Code”) on July 31, 2020 (the “Petition Date”), initiating *In re RealtyShares, Inc.*,
21 Case No. 20-30621 (the “Chapter 7 case”).

22 7. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157 and
23 1334.

24 8. This proceeding is “related to” within the meaning of 28 U.S.C. § 157(a), and an
25 adversary proceeding pursuant to Rule 7001 of the Federal Rules of Bankruptcy Procedure (the
26 “Bankruptcy Rules”), which relates to the Chapter 7 case.

9. Venue is proper in this Court and Division pursuant to 28 U.S.C. §§ 1408 and 1409 and B.L.R. 1002-1(a).

10. Pursuant to Rule 7008 of the Bankruptcy Rules, the Trustee consents to entry of final orders and judgments by the Court if it is determined that the Court, absent the consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

Facts

***RealtyShares' intercompany transactions
with RS Lending and RealtyShares Securities***

11. During the course of its operations prior to filing for bankruptcy, RealtyShares engaged in various transactions with its affiliates and subsidiaries, including RS Lending and RealtyShares Securities.

12. These transactions were entered into RealtyShares' General Ledger in the ordinary course of its business.

13. As evidenced by RealtyShares' December 31, 2018 General Ledger, the RealtyShares bankruptcy estate holds a claim against RS Lending in the amount of \$47,136.318.21. There is an offset for an intercompany payable of \$8,795,252.86. The net balance owed the RealtyShares bankruptcy estate by RS Lending is \$38,341,065.35.

14. As evidenced by RealtyShares' December 31, 2018 General Ledger, the RealtyShares bankruptcy estate holds a claim against RealtyShares Securities in the amount of \$20,784,748.52. There is an offset for an intercompany payable of \$1,037,147.21. The net balance owed the RealtyShares bankruptcy estate by RealtyShares Securities is \$19,747,601.31.

IIRR becomes successor to RealtyShares' subsidiaries and affiliates, including RS Lending and RealtyShares Securities

15. Between 2013 and 2018, more than a thousand investments, totaling more than \$800 million dollars, were funded through the RealtyShares Platform.

1 16. In March 2019, RealtyShares began advising investors that one of the companies in which
2 its clients had invested, Franchise Growth, LLC, was defaulting on the loans, that construction on the
3 projects had ceased or had never even started and that the loan funds were substantially depleted.

4 17. IIRR is a single-purpose entity formed on or about April 24, 2019 for the sole purpose of
5 acquiring RealtyShares' assets and taking over RealtyShares' operations and its RealtyShares
6 Platform.

7 18. On or about April 29, 2019, IIRR acquired all the assets and operations of
8 RealtyShares and its subsidiaries and affiliates, including RS Lending and RealtyShares Securities,
9 acquired the RealtyShares Platform through which all investors' investments were made, and
10 contracted with RealtyShares to manage the remaining investments and investors on the
11 RealtyShares Platform.

12 19. The acquisition was effectuated through various agreements, the two major ones
13 being an "Asset Purchase and License Agreement" and a "Management Services Agreement."

14 20. The Management Services Agreement between RealtyShares (referred to as the
15 "Company") and IIRR provided that IIRR would manage "all active portfolio managed real estate
16 investments that the Company originated and promoted on its website platform, and through or in
17 which various investors of the Company (the "Platform Investors") made investments, and shall
18 include the specific investment entities organized to effectuate such Investment on behalf of the
19 Platform Investors."

20 21. That agreement provided that IIRR (referred to as the "Manager") "shall handle all
21 asset management services through RealtyShares Advisor, LLC or such other adviser as the
22 Manager may reasonably determine . . . by keeping the website www.realtyshares.com up and
23 running (as further described in clause (e) below, either directly or through the assumption, in its
24 sole discretion, of the Company's support services agreement with Current Intelligence Inc.)"

25 22. That agreement provided that "[t]he Manager shall control the prosecution or defense
26 of any and all legal proceedings and/or third party claims by or against the Company and the
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1 Subsidiaries that relate to the Portfolio Managed Investments arising or accruing from and after
2 the Effective Date.”

3 23. The transaction documents reflect that RealtyShares personnel would be transitioned
4 to IIRR under “Transition Services Agreements.”

5 24. Taken together, the acquisition documents reflect that IIRR took over all the
6 operations and business of RealtyShares and its subsidiaries and affiliates, lock, stock and barrel.

7 25. Following the transfer, as agreed, IIRR used RealtyShares’ staff and partners to continue
8 the same operations. IIRR has continued the operations of RealtyShares, RS Lending and RealtyShares
9 Securities without interruption and without any substantive changes.

10 26. For all practical purposes, IIRR consolidated, merged with and took over the operations
11 of RealtyShares, RS Lending and RealtyShares Securities.

12 27. Following the transfer, RealtyShares became a moribund entity and existed as a shell
13 company only on paper for the purposes of winding down its affairs before ultimately filing for
14 bankruptcy.

15 28. IIRR, having stepped into the shoes of RealtyShares, then told the investors in the
16 Franchise Growth-investments that they should expect to incur substantial losses.

17 29. The April 29, 2019 acquisition agreements are structured in a way that gives IIRR
18 complete dominion and control over all RealtyShares’ assets and operations. It provides that IIRR
19 acquired “Initial Purchased Assets” consisting of RealtyShares’ investment portfolio and client lists,
20 and also gave IIRR an exclusive, open-ended license to RealtyShares’ remaining assets, including all
21 its intellectual property such as the RealtyShares’ website (the “Licensed Assets”). The agreement then
22 gives IIRR an open-ended, exclusive option to purchase the Licensed Assets for \$1.00.

23 30. The April 29, 2019 agreements provide that, once IIRR exercised the right to purchase the
24 Licensed Assets for \$1.00, it would assume RealtyShares’ liabilities. The agreements were self-
25 evidently structured to try to shield IIRR from being deemed to have assumed RealtyShares’ liabilities.

26 31. The “purchase price” for the acquisition was \$500,000.
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1 32. As a result of the acquisition, IIRR has taken over \$1.5 billion in assets under
2 management from RealtyShares and RS Lending, while investors have been left with an almost total
3 loss of their investments.

4 33. Under the circumstances, no adequate consideration was given for the RealtyShares'
5 assets acquired by IIRR and made available for meeting the claims of RealtyShares' unsecured
6 creditors.

7 34. At all times after April 29, 2019, IIRR has operated as and been the successor to RS
8 Lending and RealtyShares Securities, has impliedly and expressly assumed their liabilities, and
9 has effectively consolidated and merged with RS Lending and RealtyShares Securities by
10 continuing their business operations, managing the same assets, using the same platform and
11 employing the same personnel, effectively amounting to a merger and/or consolidation between
12 RealtyShares, its subsidiaries and affiliates, and IIRR, resulting in the complete continuation as
13 successor of RealtyShares' business and operations.

14 35. This is confirmed by IIRR's own contemporary and current descriptions to
15 RealtyShares investors.

16 36. In an announcement to RealtyShares investors on or about May 14, 2019,
17 RealtyShares advised as follows, emphasizing the continuity in operations following IIRR's
18 agreement to manage the RealtyShares investments and to purchase the RealtyShares Platform and
19 RS Lending and their assets:

20 Today, we are pleased to announce that we have contracted with IIRR Management
21 Services, LLC to manage the remaining investments and investors on the RealtyShares
22 platform, and to purchase certain assets of RealtyShares and its subsidiaries....
23 IIRR Management Services, LLC will leverage current RealtyShares staff and partners
24 (including Assure Services, our Fund Administrator) to continue servicing investors and
25 assets through the RealtyShares platform.... This contract management transition does not
26 change your rights in or the structure of the underlying real estate investments. You can
27 continue to reach us at contact@realtyshares.com.

1 37. Following this announcement, IIRR posted the following on the home page of the
2 RealtyShares web site, www.realtyshares.com:

3 We are proud to announce that RealtyShares ongoing operations for investors is
4 being taken over by IIRR Management Services, LLC....

5 CONTACT US contact@realtyshares.com

6 IIRR has acquired RealtyShares.com from RealtyShares Inc. We will continue to
7 operate the RealtyShares site and offer the same high quality platform and
8 services. As of April 29, 2019, all RealtyShares users are subject to the Privacy
9 Policy and Terms of Service of IIRR Management Services, which provides the
10 same level of privacy rights and protections for users' personal information as
11 RealtyShares's former Terms of Service and Privacy Policy.

12 38. IIRR has continued offering the exact same services that RealtyShares previously
13 provided to investors, and has done so using the same RealtyShares' website, which IIRR now controls
14 and manages. IIRR does not have and has never had its own website.

15 39. The LinkedIn® page for IIRR, [https://www.linkedin.com/company/iirr-management-](https://www.linkedin.com/company/iirr-management-services)
16 services, states that it "is one of the largest crowd funded real estate investment firms in the
17 world," that it "recently took over management of RealtyShares' portfolio," and that its
18 headquarters are in San Francisco, California (accessed Nov. 29, 2021).

19 40. An active RealtyShares webpage, realtyshares.com, continues to state, "We are proud
20 to announce that RealtyShares ongoing operations for investors is being taken over by IIRR
21 Management Services, LLC" (accessed Nov. 29, 2021).

22 41. Another active RealtyShares webpage, <https://www.realtyshares.com/investor-signup>,
23 states, "For new offerings from the affiliates of IIRR Management Services, LLC, iintoo
24 Investments and RREAF Holdings, LLC, please click here," and under the heading "CONTACT
25 US" states that "IIRR has acquired RealtyShares.com from Realty Shares, Inc. We will continue to
26 operate the RealtyShares site and offer the same high quality platform and services" (accessed
27 Nov. 29, 2021).

42. In litigation in the United States District Court for the District of Massachusetts brought by former RealtyShares investors styled *Raudonis v. RealtyShares, Inc.*, case no. 1:20-cv-10107 (PBS), IIRR obtained a stay of the action under the automatic stay of proceedings against RealtyShares as a result of its bankruptcy filing, *see* 11 U.S.C. § 362(a)(1), predicated on IIRR’s status as the successor to RealtyShares. *See* Memorandum and Order, ECF Doc. 67 (12/16/20) at 3 (“IIRR, the successor to RealtyShares, . . .”), 5 (“The parties agree that, because IIRR is the successor to RealtyShares, the plaintiffs cannot proceed against IIRR without also proceeding against RealtyShares. Accordingly, the Court grants IIRR’s motion seeking to stay proceedings against IIRR.”).

Claims for Relief

Count I

Account Stated (RS Lending)

43. The Trustee repeats and incorporates the allegations set forth above.

44. Based on the prior course of conduct and prior transactions reflected in the RealtyShares General Ledger, RS Lending owes the RealtyShares bankruptcy estate the sum of \$38,341,065.35.

45. By virtue of their ongoing intercompany course of business, RS Lending agreed that the net amount owed by RS Lending to RealtyShares of \$38,341,065.35 was and is the correct amount owed.

46. By virtue of their ongoing intercompany course of business, RS Lending promised to pay to RealtyShares the stated amount of \$38,341,065.35.

47. RS Lending has not paid RealtyShares or the RealtyShares bankruptcy estate the stated amount of \$38,341,065.35.

Count II

Account Stated (RealtyShares Securities)

48. The Trustee repeats and incorporates the allegations set forth above.

49. Based on the prior course of conduct and prior transactions reflected in the RealtyShares General Ledger, RealtyShares Securities owes the RealtyShares bankruptcy estate the sum of \$19,747,601.31.

50. By virtue of their ongoing intercompany course of business, RealtyShares Securities agreed that the net amount owed by RealtyShares Securities to RealtyShares of \$19,747,601.3 was and is the correct amount owed.

51. By virtue of their ongoing intercompany course of business, RealtyShares Securities promised to pay to RealtyShares the stated amount of \$19,747,601.31.

52. RealtyShares Securities has not paid RealtyShares or the RealtyShares bankruptcy estate the stated amount of \$19,747,601.31.

Count III

Common Count (RS Lending)

53. The Trustee repeats and incorporates the allegations set forth above.

54. RS Lending owes the RealtyShares bankruptcy estate the sum of \$38,341,065.35.

55. As a result of the ongoing intercompany course of business between RS Lending and RealtyShares, RealtyShares provided valuable consideration for the amount owed of \$38,341,065.35.

56. RS Lending has not paid the RealtyShares bankruptcy estate the amount owed of \$38,341,065.35.

Count IV

Common Count (RealtyShares Securities)

The Trustee repeats and incorporates the allegations set forth above.

57. RealtyShares Securities owes the RealtyShares bankruptcy estate the sum of \$19,747,601.31.

58. As a result of the ongoing intercompany course of business between RealtyShares Securities and RealtyShares, RealtyShares provided valuable consideration for the amount owed of \$19,747,601.31.

59. RealtyShares Securities has not paid the RealtyShares bankruptcy estate the amount owed of \$19,747,601.31.

Count V

Money Had and Received (RS Lending)

60. The Trustee repeats and incorporates the allegations set forth above.

61. As a result of the ongoing intercompany course of business between RS Lending and RealtyShares, RS Lending received the net sum of \$38,341,065.35.

62. As a result of RS Lending's receipt of the net sum of \$38,341,065.35 in intercompany transactions from RealtyServices, RS Lending is indebted to the RealtyServices bankruptcy estate in the amount of the net sum of \$38,341,065.35.

Count VI

Money Had and Received (RealtyShares Securities)

63. The Trustee repeats and incorporates the allegations set forth above.

64. As a result of the ongoing intercompany course of business between RealtyShares Securities and RealtyShares, RealtyShares Securites received the net sum of \$19,747,601.31.

65. As a result of RealtyShares Securities' receipt of the net sum of \$19,747,601.3 in intercompany transactions from RealtyShares Securities, RealtyShares Securities is indebted to the RealtyServices bankruptcy estate in the amount of the net sum of \$19,747,601.31.

Count VII

Successor Liability (IIRR)

66. The Trustee repeats and incorporates the allegations set forth above.

67. As the successor to RS Lending, IIRR is jointly and severally liable for RS Lending's debts and obligations, including RS Lending's obligation to the RealtyShares bankruptcy estate in the amount of \$38,341,065.35.

68. As the successor to RealtyShares Securities, IIRR is jointly and severally liable for RealtyShares Securities' debts and obligations, including RealtyShares Securities' obligation to the RealtyShares bankruptcy estate in the amount of \$19,747,601.31.

1 *Prayer for Relief*

2 The Trustee respectfully requests that the Court grant the following relief:

- 3 1. Awarding the Trustee the sum of \$38,341,065.35 against RS Lending.
4 2. Awarding the Trustee the sum of \$38,341,065.35 against RS Lending and IIRR, jointly
5 and severally.
6 3. Awarding the Trustee the sum of \$19,747,601.31 against RealtyShares Securities.
7 4. Awarding the Trustee the sum of \$19,747,601.31 against RealtyShares Securities and
8 IIRR, jointly and severally.
9 5. Awarding pre- and post-judgment interest according to law.
10 6. Awarding the Trustee her costs and attorneys' fees as may be permitted by law; and
11 7. Granting such other relief as may be just.

12 Dated: December 10, 2021

KIEVE LAW OFFICES

13 By *s/ Loren Kieve*_____

14 Counsel for plaintiff E. Lynn
15 Schoenmann, Trustee of the
16 Bankruptcy Estate of RealtyShares,
17 Inc.
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